

## Legal Services

### Achievements

- Formulated amendments to the SFO and its subsidiary legislation to address market developments
- Advised on possible breaches of the securities laws
- Conducted a significant number of successful prosecutions for regulatory offences

### This Chapter Is About

- The Securities and Futures Ordinance
- Prosecutions and appeals
- Legal support for the SFC's work

### What We Do

- Provide internal advice on possible breaches of the securities laws, including market misconduct
- Advise on the applicability and interpretation of laws under the SFC's purview
- Assist with reform of the laws governing the securities and futures markets

- Conduct prosecutions in the Magistrates' Courts for regulatory offences
- Handle civil litigation matters involving the SFC, including appeals
- Advise the Takeovers Executive and the Takeovers Panel
- Provide general in-house legal advice and support

### What We Did

#### The Securities and Futures Ordinance

We continued our review of the SFO to consider if its provisions are effective in meeting the SFC's policy objectives and whether updates are needed to accommodate market developments.

As mentioned in previous chapters, we proposed legislative changes to the Securities and Futures (Investor Compensation – Levy) Rules to provide for an automatic levy collection mechanism. We fine-tuned the legal definitions of certain regulated activities in Schedule 5 to the SFO to meet changing market developments. We worked on proposed legislative amendments to give statutory backing to certain listing requirements.

We also worked with the Government to prepare amendments to the disclosure of interests regime under Part XV.

## Prosecutions and appeals

We continued to advise on evidence and prosecute a wide range of offences in the Magistrates' Courts under section 388 of the SFO and the old securities-related ordinances. These offences include making unsolicited calls (cold calling), short selling, market manipulation, unlicensed investment activities, breach of disclosure requirements, providing false or misleading information, and failing to assist SFC investigations.

Over the year, we conducted a significant number of successful prosecutions. In particular, more individuals were prosecuted for making unsolicited calls.



### SFC v Lee Sing Wai Stephen

In June 2002, Lee pleaded guilty in the District Court to a charge of creating a false or misleading appearance of active trading, contrary to sections 135(1)(a) and 139 of the repealed Securities Ordinance (SO), regarding the shares of Gay Giano International Group Ltd. Lee was convicted and sentenced to nine months' imprisonment suspended for three years.

In October 2005, Lee pleaded guilty in the Magistrates' Court to a charge brought by the SFC of failing to attend an SFC interview on 25 September 2003 without reasonable excuse. This offence related to the SFC's investigation into dealings in the shares of Essex Bio-Technology Ltd. Lee was convicted and fined \$15,000. As this offence was committed during the operational period of the suspended sentence imposed by the District Court, the magistrate referred the case back to the District Court to consider whether action should be taken on the breach of the suspended sentence.

Judge Whaley in the District Court subsequently activated the suspended sentence but reduced the original term of imprisonment from nine months to six months. In February 2006, Lee appealed against the activation of the suspended sentence but the court rejected his appeal.

In January 2006, Lee was prosecuted by the SFC for creating a false or misleading appearance of active trading in the shares of Essex, between 14 February 2003 and 31 March 2003. Lee committed this offence during the operational period of the suspended sentence. Lee pleaded guilty and was sentenced to seven months' imprisonment, which the magistrate ordered to run consecutively to the six months' imprisonment Lee was ordered to serve by the District Court. Lee appealed against the sentence on the basis that it was too severe. Mr Justice McMahon heard the appeal on 29 March 2006. Mr Justice McMahon disagreed that seven months' imprisonment was too severe. He stated that the scheme was sophisticated and a relatively large operation which aimed to make a profit by selling shares at artificially high prices. He stated that offences such as these are not merely regulatory or technical but amount to fraud on the investing public. Mr Justice McMahon stated that he agreed with the comments of the magistrate who sentenced Lee, that the scheme hampered the proper practice of share trading on the Unified Exchange and this in turn hampered the reputation of Hong Kong as a significant stock market in the world. Lee's appeal was dismissed.

**Legal Services****Legal support for the SFC's work**

In August 2005, the SFC succeeded in its application to the High Court to dismiss an action brought by Mr Ng Yat Chi and Mr Choy Bing Wing. The action alleged, amongst other things, that the SFC had concealed corporate fraud and failed in its duty to suspend certain stocks. The High Court refused Mr Ng leave to continue the action and dismissed his claim. The High Court also found that Mr Choy's claim against the SFC was an abuse of the process of the court and ordered that his statement of claim be struck out and his claim be dismissed. Both Mr Ng and Mr Choy were ordered to pay the SFC's costs on an indemnity basis.

**Court vindicates SFC's handling of complaint**

Ms Winnie Ho Yuen Ki applied to the High Court in 2005 for leave to seek judicial review of a decision by the SFC. Ms Ho was dissatisfied with the SFC's decision not to investigate a complaint she had raised regarding the affairs of Shun Tak Holdings Ltd. The SFC considered that it did not have jurisdiction to investigate Ms Ho's complaints and, even if it did, could not justify the use of its limited resources, as it would be unlikely to obtain sufficient evidence to take regulatory action. Therefore, the SFC had decided instead to apply its resources to other more significant cases and would continue to do so in future.

Mr Justice Reyes heard and dismissed the application in January 2006. In his judgment he stated that "the SFC's handling of Madam Ho's complaints and its reasons for declining to pursue them further are impeccable. As far as I can see looking at matters as a whole, the SFC has properly and reasonably exercised its discretion on whether or not to pursue such a case".

One of our main functions is to provide legal advice to the SFC's operational and support divisions. During the year, we advised on matters including:

- interpretation of old securities-related ordinances and the SFO;
- other legislation affecting the SFC such as the Companies Ordinance, the Personal Data (Privacy) Ordinance, the Copyright Ordinance and the Employment Ordinance;
- proposed amendments to SFO subsidiary legislation to address the risks of securities margin financing;
- amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules;
- the SFC's procedures, to ensure procedural fairness in the exercise of our powers; and
- all aspects of the SFC's decision-making process including the exercise of our investigative, disciplinary and intervention powers including proceedings under section 214 of the SFO against a former director of a listed company.